PROVINCIAL PARTICIPATION IN THE CANADA-U.S. TRADE NEGOTIATIONS

presented to the

Western Premiers' Conference

May 29-30, 1986

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Premier
Province of British Columbia

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Foreword

The action taken on May 22 by the United States in imposing duties on the Canadian shake and shingle industry serves to underline the complex and difficult bargaining environment within which Canada-U.S. trade negotiations have been launched.

This action on the part of the Reagan administration is in stark contradiction to British Columbia's interpretation of the understanding reached between Prime Minister Mulroney and President Reagan at the Shamrock summit: that no protectionist actions would be launched by either party during the period of these trade negotiations.

On May 20, the Premier of British Columbia asked Prime Minister Mulroney to raise directly with President Reagan Canada's objections to any new protectionist trade actions for the duration of the negotiations: in other words for a "standstill" agreement. The wholly unjustifiable duty imposed last week on shakes and shingles is therefore deeply troubling to British Columbians and to all Canadians, both for the impact it will have on the specific industry affected, and because it is but one of a growing list of protectionist actions under consideration in the United States. These other actions, such as the Gibbons Bill and the softwood lumber countervail application, specifically target resource inputs, and would have potentially devastating effects over the whole range of Canadian resource industries.

To provide a critical element of stability during the complex bilateral trade negotiations, British Columbia requested that Ambassador Reisman demand such a "standstill". A standstill is likely to be the *sine qua non* for most countries in agreeing to the U.S. agenda for a new round of the GATT. Without such a provision in the bilateral negotiations, Canada will, in effect, be placed in the invidious position of having to bargain to reinstate the *status quo ante* with respect to such critical issues as resource inputs.

While British Columbia had been assured that Ambassador Reisman was considering this demand, apparently no discussion on this point took place during the first round of discussions between Ambassadors Reisman and Murphy. The standstill proposal is one which British Columbia believes to be a critical element of the negotiating mandate.

In the view of British Columbia, the case made in this paper regarding provincial participation in the trade negotiations is rendered all the more compelling, and all the more urgent, by these recent events. Consultation alone has been demonstrated to be insufficient for the provinces, and is inadequate to ensure that provinces will be "on board" at the end of the day — as the U.S. side is demanding. The paper argues that the essential role of the provinces in the implementation of any agreement negotiated with the Americans necessarily entails that the provinces play the role of full partners in setting the mandate, and in ratifying any agreement which might be concluded. As federal and provincial governments seek to find common ground on this question, British Columbia is convinced that a solution can be found along the lines outlined here, and confident that the will exists to agree on that solution.

Introduction

Last September the Prime Minister of Canada called on the President of the United States to enter into negotiations to enhance Canada-U.S. trade.

In taking this bold step, Mr. Mulroney responded to calls made by many Canadians — including several Premiers — to launch this initiative.

A key issue arising in the context of Canada-U.S. trade talks and prompting much public discussion is the role of the provinces.

As with Canada-U.S. trade itself, this issue relates to a larger recurring theme in Canada: how best to develop and coordinate policy in our federal system.

Put more practically, the question is whether we can get our act together as a country: whether we can forge a common will in the face of stiff international competition.

The need to resolve this larger theme is urgent and cannot be overemphasized — given that Canada's debt-to-GNP ratio is the second highest among OECD countries, and that our record in terms of manufacturing productivity increases has been the worst.

The importance of trade in Canada's relatively small and open economy is clear. Fully one-third of our production is exported — compared to Japan's 20% and the U.S. figure of 10%.

While British Columbia's trade patterns have diversified considerably in the last twenty years, for Canada as a whole trade with the United States has grown such in recent decades that the U.S. is by far the largest buyer of Canadian goods — taking 75% of all our exports. We must never lose sight of the fact, however, that this trading relationship is mutual: Canada buys fully one-fifth of the total exports produced by its giant neighbour.

It is this background, and the growing trend to protectionism, that give impetus to the development of a more stable, formal arrangement for Canada-U.S. trade.

It is clear that the negotiation of such an agreement is unavoidably complex — as recent American actions demonstrate.

Provincial Participation

In this light, the question of provincial participation in the negotiation and implementation of a trade agreement becomes all the more critical.

At the First Ministers' Conference in Halifax last November, Prime Minister Mulroney assured the Premiers that the provinces would be full participants in bilateral trade negotiations with the United States. This commitment reflects a welcome spirit of cooperation in the realm of federal-provincial relations. It is also an accurate reflection of Canadian economic and political reality as it has evolved in recent years.

Ottawa's approach to provincial participation answers calls made by Premiers over the past four years. The 1984 Western Premiers' Conference in Kelowna, for example, stressed the need for the Federal Government "to ensure full provincial involvement in the development of Canadian policies, priorities and strategies related to trade".

Again, in Grande Prairie one year ago, Western Premiers re-emphasized the need for full provincial involvement in all stages of bilateral Canada-U.S. negotiations.

This call for full provincial participation is not born of a desire to intrude into areas of federal jurisdiction.

There is no doubt that the Federal Government has the constitutional authority to negotiate an international agreement on its own. The key point, however, is that any agreement concluded will include items within provincial jurisdiction — and implementation will require provincial consent.

Changing Context

In the past, international trade talks focussed largely on tariff barriers — solely under Ottawa's discretion. After the Tokyo round, however, growing attention has focussed on such non-tariff barriers to international trade as government procurement or product standards.

In Canada, many of these non-tariff barriers fall within the constitutional jurisdiction or proprietary rights of the provinces. For this reason alone the provinces should be full participants in determining trade policy; since effective implementation of an agreement will require the active cooperation of the provinces, each in its sphere of jurisdiction.

In other words, the role of the provinces in reaching a workable agreement is unavoidable. Compounded by the current focus on non-tariff issues, there should be no doubt about the need for provincial participation in the negotiating process.

The key question, therefore, is not whether the provinces participate in the process, but what form this participation will take.

Much discussion since the Prime Minister's historic proposal last September has revolved around whether the provinces are "in the room" or not, or on the differences between "consultation" and "participation."

In March, Premier Getty sent the Prime Minister — on behalf of the provinces — an eight-point proposal on how the Halifax Accord on full provincial participation could be turned into reality. The Prime Minister will meet with the Premiers on June 2nd, at which time the issue will be pursued.

While no concrete federal proposal on provincial participation has been articulated to date, doubts have been raised in some quarters as to the practicability of Premier Getty's eight-point proposal. As an alternative, federal officials and Ministers appear to favour a consultative approach and promise to meet regularly with provincial officials. The provinces are wary of this approach, fearing that issues of critical importance to them will be bargained, and trade-offs made, without their knowledge.

Focus on Interests

To assist in resolving this issue, we would do well to recognize that federal-provincial agreement is more likely to be secured in a negotiation by focussing on interests rather than on positions. To date, it would appear that the discussion of provincial participation has focussed more on the positions of the two orders of Government rather than on their underlying interests. A way out of the apparent impasse can be found if, instead, we concentrate on the eventual need to engage the provinces in the implementation of any agreement that is negotiated. If there were ever any doubt of this need, the recent statements

of Ambassador Murphy should leave no doubt that provincial participation is essential to a trade agreement.

It is clear that, given the division of powers in Canada, and the likely agenda of Canada-U.S. negotiations, the implementation of any agreement negotiated will have to respect the division of powers. From this, two major points follow.

First, if the focus is on interests rather than positions, there is a clear federal interest in seeking a united Canadian voice in these negotiations. There is also a legitimate federal interest in preventing breaches and leakages that could damage Canada's negotiating position — as well as the standing of the Federal Government. From these interests springs the federal desire to limit the role of the provinces to consultation, rather than to involve provincial representatives formally in the negotiations.

But the provinces, too, have clear interests in this context — with respect to economic development, adjustment, regional industries and so on. The provinces are concerned that consultation alone is not sufficient to protect these interests.

The importance of these interests to the provinces, and the central role of these same interests in the negotiations, underlies the provincial position advocating involvement at all stages of negotiations. In negotiation language, the provinces want to be "at the table".

The current impasse is one of trust — Ottawa does not trust the provinces to maintain confidentiality; provinces do not trust Ottawa to represent their interests. Each side essentially asks the other to trust it.

If the basic issue continues to be viewed from the perspective of purely positional bargaining, this impasse is likely to delay, if not threaten, the Canada-U.S. negotiations. If, however, the focus is shifted to the federal and provincial interests which underlie these positions, then a solution is more likely to be found.

This approach makes it possible to see that federal and provincial interests are not mutually exclusive. Indeed, both orders have a common interest in a good deal for Canada. As one example, the identification of this common interest argues for the need to mandate the Canadian negotiator to arrive at a "standstill" agreement with respect to protectionist trade actions by both countries on particular trade irritants for the duration of the negotiations —an agreement which will no doubt be essential if U.S. trade partners are to agree to a new round of multilateral discussions in the GATT. A clear focus on the underlying interests supporting this commonality — rather than rigid pursuit of specific positions which are only one of many possible expressions or manifestations of those interests — will enable us to devise mutually-acceptable means of defining this common ground.

Focus on Implementation

The second major point relates to the question of implementation. A focus on interests requires that attention be inevitably drawn to the need for a federal-provincial decision rule governing the setting of the mandate and the implementation of any agreement — in essence, a ratification procedure.

More than one observer has suggested consideration of the procedure for amending the constitution as the Canadian way of ratification. Once the crucial issue of a decision rule for setting the mandate and implementing an agreement has been addressed, questions

relating to provincial participation — determining the actual conduct of the negotiations — become more easily resolvable, almost housekeeping matters.

This follows from the fact that a ratification procedure which reflects the Canadian reality of shared interests and jurisdictional responsibilities will require federal negotiators to keep provincial representatives fully involved, because they know they will need a certain degree of provincial concurrence at the end of the day.

Our American neighbours fully realize the importance of full provincial participation in arriving at a "deliverable" agreement, as was made clear by Ambassador Murphy's recent comments on the need to ensure that provinces are bound by any agreement. Given the importance the U.S. places on non-tariff barriers, this should come as no surprise.

The role of the Canadian provinces can be compared to that of the U.S. Senate — in that federal representatives of both countries must proceed on the understanding that any agreement they negotiate must be "sold" to another authority.

If Ambassador Reisman were not in a position to deliver the provinces, American consternation would be equivalent to the Canadian response to the U.S. Senate's rejection of the Canada-U.S. East Coast fisheries agreement.

While no equivalent body for formal treaty ratification exists in Canada, the role of the U.S. Senate in this regard is functionally paralleled by the role of the provinces. Under our system, issues included in a trade agreement will have to be implemented by provincial action. By contrast in the U.S., the Federal Government can bind the States in areas which would otherwise fall under state jurisdiction.

Because the provincial role with respect to implementation is critically more significant, it is to Canada's advantage to be in a position to assure the U.S. that the provinces are "on board" in the negotiating process. Rather than viewing provincial participation as a problem, Canada instead has the opportunity to use the need for eventual provincial ratification to strengthen the hand of the Canadian negotiator during the bargaining process.

When dealing with the U.S. negotiator, our representative can use as a lever his need to convince the provinces — citing their practical role in implementing an agreement. This is a powerful incentive to get movement on particular issues, just as American negotiators can — and do — use the need for Senate ratification to extract concessions during negotiations.

Need for Partnership

At home here in Canada, it is also clearly in the interest of the Federal Government to ensure that the provinces are full partners in such an historic and sensitive exercise.

Canadian history has repeatedly demonstrated that our relations with the United States entail a high degree of political risk. If anything, the risk is greater now than it was in our formative years — primarily because the stakes are greater. Any short-term job losses that may result from trade-related adjustments often block the vision of greater potential long-term job gains that will flow from secure access to the larger North American market.

Concerns about Canadian identity and cultural sovereignty sometimes drown out serious warnings about the instability of the status quo in the context of increasingly protectionist tendencies in the United States. The significant economic, emotional and political stakes

provide tempting opportunities for posturing and grandstanding — on both sides of the border.

For all these reasons, it is to the clear advantage of the Federal Government to forge as broad a coalition as possible in pursuing these talks. Because of the provinces' role in implementing whatever bilateral agreement that emerges, their full participation in forging this coalition is critical. Not only must the provinces be "sold" on any agreement resulting from negotiations with the Americans, the Federal Government will need the provinces to help "sell" such an agreement to the Canadian people. In a rough sense, this is not unlike the need which arises in the context of labour/management negotiations — to sell agreements to the union locals or company plants.

Constitutionalization

In suggesting that a Canada-U.S. trade agreement may, at the end of the day, be ratified by means of the amending formula, British Columbia is of the view that we need not take the current formula set out in the Constitution Act as a given.

Quebec has, of course, not yet supported this Act, and a new round of constitutional discussions is likely to begin shortly. While it is impossible to predict their outcome, it would be good to keep open the possibility that the amending formula itself may be changed. The pace of these discussions is likely to coincide with the Canada-U.S. trade negotiations.

The Canadian public agenda will thus be dominated by two great questions — our relations with each other as Canadians, and our relations with our neighbour to the South. While these two major issues are not necessarily linked, their coincidence presents an opportunity to address the issue of the formula for ratification of a Canada-U.S. trade agreement. Thus, the uncertainty surrounding the formula for ratification of a trade agreement coincides fortuitously with the uncertainty surrounding the constitutional issue.

Interdependence

The issues involved are important and sensitive to all Canadians.

Our Federal and Provincial Governments must work together closely to ensure that we enter the trade negotiations with the ability to make the best deal possible for all Canadians. Canada has a strong case to take to the table and must not shrink from doing so. In these negotiations, it is clear that a single voice must speak for Canada: and that "Canada" means all Canadians.

The trade negotiations will undoubtedly be difficult, but if approached with determination and self-confidence, they will succeed. The impact of a changing world economic environment, the increased interdependence of nations within that environment, and of Federal and Provincial Governments within Canada — all require Canadians and their governments to work more closely together than ever before over the entire range of public issues. The goodwill and the common sense which is a necessary condition for such harmonious cooperation must continue to be shown by all concerned.